

DOCUMENT RESUME

01982 - [A1052041]

**Conflicting Claims for Unpaid Fees Due Deceased Witness.
B-187121. April 13, 1977. 5 pp.**

**Decision re: Raymond D. Vinegar; by Robert F. Keller, Deputy
Comptroller General.**

**Issue Area: Personnel Management and Compensation (300).
Contact: Office of the General Counsel: Civilian Personnel.
Budget Function: General Government: Central Personnel
Management (805).
Organization Concerned: National Labor Relations Board.
Authority: Indiana Statutes Annotated, title 29 (Burns).**

James A. Stepien, Authorized Certifying Officer,
National Labor Relations Board, requested a decision as to the
person to be paid the fees due a witness in a National Labor
Relations Board case who died intestate. Claims for the unpaid
witness fee were filed by the decedent's mother and by his
illegitimate child. The fees should be paid in accordance with
the law of Indiana, domicile of the deceased. The deceased's
mother should be paid. As the child had not met the requirements
to inherit from the father, payment may not be made to the
child. (Author/SC)

01982

Herbert Dunn
Civ. Pers.

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-187121

DATE: April 13, 1977

**MATTER OF: Conflicting claims for unpaid fees due
deceased witness**

DIGEST: Witness in NLRB case died intestate. Claims for unpaid witness fee were filed by decedent's mother and his illegitimate child. Fees should be paid in accordance with law of Indiana, domicile of deceased, to person submitting affidavit under collection of small estate procedure since no administrator will be appointed. Mother should be paid since child has not met requirements to inherit from father.

This matter concerns the request by Mr. James A. Stepien, an authorized certifying officer of the National Labor Relations Board (NLRB), for an advance decision as to the person to be paid witness fees payable to Mr. Raymond D. Vinegar, deceased. Claims have been submitted by the mother of the deceased and by the natural guardian of the decedent's illegitimate child.

The witness, who was domiciled in the State of Indiana, died intestate and was unmarried at his death. The record indicates that an administrator has not been and will not be appointed. The funeral expenses have not been paid, but the decedent's mother states that she is responsible for them.

It is well established that the distribution of the estate ordinarily is a matter of State law rather than Federal law. Title 29, Indiana Statutes Annotated (Burns, 1976), provides in pertinent part the following regarding the collection of small estates:

"29-1-8-1 17-2017. Collection of small estates—Affidavit—Motor vehicle—Transfer of securities.—(a) Forty-five 45 days after the death of a decedent, any person indebted to the decedent or having possession of personal property

or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be entitled to payment or delivery of property of the decedent upon being presented an affidavit made by or on behalf of the claimant stating that:

"(1) the value of the gross probate estate, wherever located, less liens and encumbrances, does not exceed eight thousand five hundred dollars /\$8,500/;

"(2) forty-five /45/ days have elapsed since the death of the decedent;

"(3) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and

"(4) the claimant is entitled to payment or delivery of the property.

* * * * *

"29-1-8-2 /7-202/. Effect of affidavit—Release—Suit—Recipient accountable.—The person paying, delivering, transferring, or issuing personal property or the evidence thereof pursuant to affidavit is discharged and released to the same extent as if he dealt with a personal representative of the decedent. He is not required to see to the application of the personal property or evidence thereof or to inquire into the truth

of any statement in the affidavit. If any person to whom an affidavit is delivered refuses to pay, deliver, transfer, or issue any personal property or evidence thereof, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in a proceeding brought for the purpose by or on behalf of the persons entitled thereto. Any person to whom payment, delivery, transfer or issuance is made is answerable and accountable therefor to any personal representative of the estate or to any other person having a superior right."

Title 29, section 29-1-2-1, provides the general rules of descent. Surviving children of the intestate are higher in the order of precedence. However, section 29-1-2-7 provides the following concerning the right of an illegitimate child to inherit:

"29-1-2-7 16-2077. Illegitimate children.—(a) For the purpose of inheritance to, through and from an illegitimate child, such child shall be treated the same as if he were the legitimate child of his mother, so that he and his issue shall inherit from his mother and from his maternal kindred, both descendants and collaterals, in all degrees, and they may inherit from him. Such child shall also be treated the same as if he were a legitimate child of his mother for the purpose of determining homestead rights, and the making of family allowances.

"(b) For the purpose of inheritance to, through and from an illegitimate child, such child shall be treated the same as if he were the

legitimate child of his father, if but only if, (1) the paternity of such child has been established by law, during the father's lifetime; or (2) if the putative father marries the mother of the child and acknowledges the child to be his own.

"The testimony of the mother may be received in evidence to establish such paternity and acknowledgment but no judgment shall be made upon the evidence of the mother alone. The evidence of the mother must be supported by corroborative evidence or circumstances.

"When such paternity is established as provided herein such child shall be treated the same as if he were the legitimate child of his father, so that he and his issue shall inherit from his father and from his paternal kindred, both descendants and collateral, in all degrees, and they may inherit from him. Such child shall also be treated the same as if he were a legitimate child of his father for the purpose of determining homestead rights, and the making of family allowances."

The above section provides that an illegitimate child shall inherit from his father if, but only if, (1) his paternity has been established in a court of law during the father's lifetime; or (2) the putative father marries the mother of the child and acknowledges the child to be his own. Since the record indicates that neither condition was met in the instant case, payment may

B-187121

not be made to the child. In the absence of any other claim, payment should be made to the mother if she submits the affidavit required by section 29-1-8-1.

Deputy

Phyllis
Comptroller General
of the United States